

United States District Court – District of Massachusetts

**If You Are a Third-Party Payor Based in or With
Beneficiaries in Massachusetts
And You Made Reimbursements For Any of the Drugs
Listed Below,
Class Action Lawsuits May Affect Your Rights.**

The District Court has authorized this Notice. It is not a solicitation from a lawyer.

You are not being sued.

Lawsuits claim that certain drug companies (the “Defendants”) intentionally reported false and inflated average wholesale prices (“AWP”) for some types of outpatient drugs (“Covered Drugs”), and asks the Court to award money damages to Third-Party Payors (“TPP”) that made reimbursements for those drugs based on the drug’s AWP. Defendants deny the claims asserted in the lawsuits.

The Court has said that the lawsuits can go forward on behalf of two “Classes” of TPPs. Those Classes include (1) TPPs who made reimbursements for all or part of their insured’s 20% co-payment under Medicare Part B for a Covered Drug between January 1, 1991 and January 1, 2005, and (2) TPPs who reimbursed for the drugs listed below outside of Medicare Part B based on a contract that uses AWP as a reimbursement benchmark between January 1, 1991 and January 1, 2006. In addition, in order to qualify to be a member of one of these Classes, TPPs must have made reimbursements for beneficiaries in Massachusetts, or made reimbursements for the Covered Drugs and have its principal place of business in Massachusetts. TPPs may be a member of either or both of the Classes.

Defendant Drug Company	Covered Drugs
AstraZeneca	Zoladex
Bristol-Myers Squibb Group	Blenoxane; Cytosan; Etopophos; Paraplatin; Rubex; Taxol; VePesid
Johnson & Johnson Group	Remicade; Procit
Schering Plough Group	Albuterol Sulfate; Intron A; Perphenazine; Proventil; Temodar

- A series of trials will determine whether the claims in this lawsuit against the Defendants are true. The first trial will begin Month Date, 2006, with AstraZeneca.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

- The charts below summarize your legal rights and choices. *You must make choices now regarding your rights. Please read all of this Notice carefully.*

A SUMMARY OF YOUR RIGHTS AND CHOICES:

You May:		Due Date
Remain in the Classes	<p><i>Stay in the lawsuit and wait for the result.</i></p> <p>By doing nothing, you stay in the Classes and may share in any recovery, if there is one, but you give up the right to sue these Defendants yourself about the claims in the lawsuit. You will also be bound by the outcome of any trial. See Question 18.</p>	<u>Do Nothing</u>
Exclude Yourself	<p><i>Get out of the Classes.</i></p> <p>You can write and ask to get out either or both of the Classes. If any money is awarded later in a trial or settlement with any of the four Defendants in the Classes, you will not get any payment, but you keep the right to sue those Defendants on your own about the claims in the lawsuit. See Question 14.</p>	<u>Postmarked</u> <u>by</u> Month Date 2006
Appear In the Lawsuit	<p><i>Participate in the lawsuit on your own or through a lawyer.</i></p> <p>If you don't exclude yourself, you can appear and speak in the lawsuit on your own or through your own lawyer. (Class Counsel has been appointed to represent you.) See Question 17.</p>	

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

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BASIC INFORMATION

1. Why did I get this Notice?

Lawsuits have been filed against several drug companies. The Court has said that the lawsuits can go forward as class actions on behalf of consumers and TPPs who paid or reimbursed for one or more of the Covered Drugs, which are listed in Appendix I at the end of this Notice.

You received this Notice because you are a TPP that may have made reimbursements for Covered Drugs between January 1, 1991 and January 1, 2005 or between January 1, 1991 and January 30, 2006. If so, the lawsuit may affect you. Each TPP Class Member has legal rights and choices to make before the Court holds a series of trials to decide whether the claims being made with respect to the drug companies are true. The first of a series of separate trials of each Defendant begins on Month Day, 2006. **Each TPP Class Member must make a choice whether to remain in the Classes before Month Date 2006.**

This Notice explains:

- What the lawsuits are about, and why they are a class action lawsuits.
- What the lawsuits claim and what the drug companies say about the claims.
- Who is affected by the lawsuits.
- What TPP's legal rights and choices are.
- Who represents TPP Class Members in the lawsuits.
- How and by when each TPP Class Member needs to act.

2. What is this lawsuit about?

Plaintiffs allege Defendant drug companies either report the average wholesale price ("AWP") of each drug they make to trade publications or provide those publications with information from which the publications calculate an AWP for each of Defendants' drugs. The published AWP of a drug may be used to set the price that consumers making co-payments, Medicare and insurance companies will pay for the drug. The lawsuits claim that Medicare, private insurers, and consumers paid more than they should have paid for the Covered Drugs because drug companies intentionally reported false and inflated AWPs on these drugs.

The Court in charge of the lawsuits is the United States District Court for the District of Massachusetts. The name of the lawsuit is *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, Docket No. 01-CV-12257-PBS. The people who sued are called the Plaintiffs. The drug companies they sued are called the Defendants.

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The lawsuits include 42 Defendants. At this time, the Court has certified the first phase of the lawsuit to begin with a trial of the claims against the following Defendants in the following order:

- AstraZeneca (AstraZeneca Pharmaceuticals L.P.);
- The Bristol-Myers Squibb Group (which includes: Bristol-Myers Squibb Co.; Oncology Therapeutics Network Corp.; and Apothecon, Inc.);
- The Johnson & Johnson Group (which includes: Johnson & Johnson; Centocor, Inc.; Ortho Biotech Products, L.P.; and
- The Schering Plough Group (which includes Schering-Plough Corp. and Warrick Pharmaceuticals Corp.).

Whenever you see the word “Defendants” in this Notice, it includes only the companies listed above: AstraZeneca, Bristol-Myers Squibb Group, Johnson & Johnson Group and the Schering Plough Group.

3. Why are these class actions?

In a class action lawsuit, one or more people or entities called “class representatives” sue on behalf of others who have similar claims. The people and entities together are a “class” or “class members.” The Court must determine if it will allow the lawsuit to proceed as a class action. If it does, a trial of the claims then decides the lawsuit for everyone in the class. The Court in these lawsuits decided they could be class actions.

4. Who qualifies as a Third-Party Payor?

A TPP is an entity that is:

- (a) A party to a contract, issuer of a policy, or sponsor of a plan, *and*
- (b) At risk, under such contract, policy, or plan, to pay or reimburse all or part of the cost of prescription drugs dispensed to covered natural persons.

TPPs include insurance companies, union health and welfare benefit plans and self-insured employers. Entities with self-funded plans that contract with a health insurance company or other entity to serve as a third-party claims administrator to administer their prescription drug benefits can qualify as TPPs. Third-party claim administrators may also file a claim on behalf of a self-funded plan if the third-party claim administrator has legal authority and authorization from the self-funded plan to do so.

THE CLAIMS IN THE LAWSUIT

5. What do the Plaintiffs claim?

The Plaintiffs claim that the Defendants violated various state consumer protection laws because they intentionally provided false and inflated AWP's on certain types of outpatient drugs, including the Covered Drugs. The lawsuits also claim that the Defendants intentionally reported inflated AWP's with the knowledge that Medicare Part B and private insurers rely on reported AWP's to determine the prices they will reimburse doctors for those

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drugs. The lawsuits say that as a result of the inflated AWP, TPPs who reimburse part or all of their insured's co-payment under Medicare Part B or who used AWP as a pricing standard for reimbursement for those drugs outside of Medicare Part B, reimbursed more than they should have. The lawsuits asks the Court to award money damages to those TPPs.

6. What do the Defendants say about the claims?

The Defendants deny the factual allegations being made; contend that the lawsuits and damages are precluded under the law; contend that the alleged conduct, if proved, does not violate the Massachusetts consumer protection law, and that many class members will not be able to establish elements of that law, or prove they paid payments for the subject drugs.

In addition, Bristol-Myers Squibb points out that it does not report AWP; it reports list prices at which a substantial percentage of its sales are made. The Johnson & Johnson Group says that Plaintiffs did not calculate Johnson & Johnson's drug prices correctly and, when these errors are corrected, it is obvious that the published prices for Johnson & Johnson drugs were not inflated. The Johnson & Johnson Group points out that it did not give doctors discounts on the drug Remicade, and the small discounts it gave to doctors on the drug Procrit were disclosed. The Johnson & Johnson Group says its drugs are less expensive than competing therapies, so Class Members who reimbursed for Johnson & Johnson's products saved money. The Schering Plough Group notes that the prices they report comport with standard industry practice.

7. Has the Court decided who is right in the lawsuits?

No. The Court hasn't decided who is right in the lawsuit yet. Much more must occur before the Court holds a trial, including notifying Class Members. By deciding now that the lawsuit can continue as a class action, the Court isn't saying who will win.

8. Are there any benefits or money available now?

No money or benefits are available now because the Court hasn't decided whether the Defendants did anything wrong. There could be money or benefits in the future if one or more Defendants settle before a trial, or if the Court decides in favor of the Classes after a trial. There's no guarantee that any money for Class Members will ever be obtained from the Defendants.

THE CLASSES

9. How many Classes are there?

The Court has ruled that there are two different Classes for TPPs who reimbursed for Covered Drugs: a MediGap TPP Class, and a Private Payor TPP Class. A TPP could be a member of one or both Classes.

10. Who is in the Classes?

A TPP is a member of the MediGap TPP Class if it made reimbursements for all or part of its insured's 20% co-payment under Medicare Part B for Covered Drugs anytime between January 1, 1991 and January 1, 2005 or

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

A TPP is a member of the Private Payor TPP Class if it reimbursed for Covered Drugs outside of Medicare Part B based on a contract that uses AWP as a reimbursement benchmark anytime between January 1, 1991 and January 1, 2006.

In order to be member of either the MediGap TPP Class or the Private Payor TPP Class, the reimbursements must have been for a beneficiary in Massachusetts or the Third Party Payor must have its principal place of business in Massachusetts.

11. What are the Covered Drugs?

The Covered Drugs are: **Albuterol Sulfate**, **Blenoxane (bleomycin sulfate)**, **Cytosan (cyclophosphamide)**, **Etopophos (etoposide phosphate)**, **Intron A (interferon alfa-2b)**, **Paraplatin (carboplatin)**, **Perphenazine (perphenazine)**, **Procrit (epoetin alfa)**, **Proventil (albuterol sulfate)**, **Remicade (infliximab)**, **Rubex (docorubicin hcl)**, **Taxol (paclitaxel)**, **Temodar (temozolomide)**, **VePesid (etoposide)** and **Zoladex (goserelin acetate)**.

You can find a complete list of the Covered Drugs, by Defendant drug manufacturer, drug name, and NDC code, in Appendix I to this Notice.

12. What does it mean if I'm a member of either or both of the Classes?

If a TPP is a member of either of the Classes listed above and does not exclude itself, it won't be able to sue the Defendants again for the claims in this lawsuit if the Court, after a trial, decides Defendants did nothing wrong. But if there is an award of money after a trial or a settlement with any of the remaining Defendants, a TPP that does not exclude itself will be able to make a claim for a share of that money.

YOUR RIGHTS AS A MEMBER OF THE CLASSES

13. How do I remain in either or both of the Classes?

A TPP is automatically a member of either or both of the Classes if it fits the Class Definitions as outlined in Question 10. At this time, a TPP does not have to do anything to remain in either or both of the Classes. Each TPP will be notified if there is a settlement with any of the Defendants or if the Court determines that any of the Defendants are liable for damages as a result of the trials.

14. Can I get out of the lawsuit and the Classes?

If a TPP is a member of either or both of the Classes, and it wants to keep the right to sue Defendants AstraZeneca, Bristol-Myers Squibb Group, Johnson & Johnson Group, or Schering Plough Group about the same claims on its own (and at its own expense), it must take steps to get out of the either or both of the Classes. This is called excluding yourself.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

15. How does a TPP exclude itself from either or both of the Classes?

To exclude itself from either or both of the Classes, a TPP must send a letter signed by an authorized representative that includes all of the following:

- The company name, address, and telephone number, and the name of its authorized representative;
- The name and number of the lawsuit: *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, Docket No. 01-CV-12257-PBS;
- If a TPP has hired its own lawyer, the name, address, and telephone number of that lawyer;
- A statement that the TPP elects to be excluded from the either the MediGap TPP Class or the Private Payor TPP Class, or both Classes; and
- A statement explaining from which Defendant Class or Classes the TPP wishes to be excluded.

All exclusion letters must be mailed first class, **postmarked on or before Month Date 2006**, to:

AWP Litigation Administrator
P.O. Box xxx
City, State Zip code

Please remember that a Class Member can't exclude itself by phone or by sending an email.

16. What happens if a TPP excludes itself, can it get any money or benefits from the lawsuit?

If a TPP excludes itself from either or both of the Classes, it will not get money or benefits from the Class(es) if any are obtained from a settlement or trial of the lawsuits involving the Defendants. If a TPP excludes itself, it is no longer part of the Classes, and nothing that happens in the lawsuits affects it. But a TPP that properly excludes itself can sue or be part of a different lawsuit against the Defendants about the claims in this case.

If you do not exclude yourself, you are bound by the result in the lawsuits. Thus, if Defendants win, your claim will be extinguished, Defendants claim that the persons and entities representing your interests do not have a valid claim and it that is correct, your claim will be extinguished unless you exclude yourself.

17. Can a TPP Class Member appear or speak in this lawsuit?

As long as it doesn't exclude itself, a TPP Class Member can (but does not have to) participate and speak for itself in these lawsuits through its own lawyer. This is called making an appearance. Remember that the TPP Class Member may have to pay for the lawyer itself. If a TPP Class Member appears in these lawsuits, it is still a Class Member and can share in any benefits the Classes might receive as a result of settlements or trials.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

18. How does a TPP Class Member appear in this lawsuit?

If a TPP Class Member wants its own lawyer instead of Class Counsel to participate or speak for it in these lawsuits, its lawyer must give the Court a paper that is called a Notice of Appearance. The Notice of Appearance should include the name and number of the lawsuit, the civil action number and state that it wishes to enter an appearance in the lawsuit.

The Notice of Appearance must be filed with the Court at the following address:

Clerk of Court
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2300
Boston, Massachusetts 02210

The Notice of Appearance must be filed using the following Civil Action Number:

01-CV-12257-PBS

A Notice of Appearance should be filed with the Court before the the series of trials of each Defendant in these lawsuits begin. The first trial is currently scheduled to start on Month Date, 2006.

IF YOU DO NOTHING

19. What happens if a TPP Class Member doesn't do anything at all?

If a TPP does nothing, it stays in one or more of the Classes. As a member of one or more Class, it will be bound by the results of one or more trials, whether those results are favorable or unfavorable to the Class, and the TPP will not be able to sue any Defendant(s) on its own. Depending on the outcome of the Class trial or trials or other rulings by the Court, in the future Class Members may be asked to provide information regarding the drugs they paid for in order to claim a portion of any class recovery. You will receive further instructions at that time explaining what information you are required to furnish and where and when to send it if there is a recovery or settlement. There is no recovery or settlement at this time.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

THE LAWYERS REPRESENTING TPP CLASS MEMBERS

20. Do TPP Class Members have a lawyer in this lawsuit?

Yes. The Court has appointed the following law firms to represent TPP Class Members:

Hagens Berman Sobol Shapiro LLP

www.hagens-berman.com

1301 Fifth Avenue, Suite 2900

Seattle, WA 98101

and

One Main Street, 4th Floor

Cambridge, MA 02142

Mark H. Edelson

Edelson & Associates LLC

45 West Court Street

Doylestown, PA 18901

Spector Roseman & Kodroff, PC

www.srk-law.com

1818 Market Street, Suite 2500

Philadelphia, PA 19103

Wexler Toriseva Wallace LLP

www.wtwlaw.us

One North LaSalle St., Suite 2000

Chicago, IL 60602

Kline & Specter, PC

www.klinespecter.com

The Nineteenth Floor

1525 Locust Street

Philadelphia, PA 19102

These lawyers are called Class Counsel. Class Members won't be charged personally for these lawyers, but they will ask the Court to award them a fee to be paid out of any recovery. More information about Class Counsel and their experience is available at the Web sites listed above.

21. Can you elaborate on who pays Class Counsel and how much will they be paid?

If Class Counsel obtains money or benefits for the Classes through a settlement or a successful trial, they will ask the Court for payment of attorneys' fees and costs out of the total amount of money and benefits obtained. The Court must approve the amount of attorneys' fees and costs. If Class Counsel doesn't obtain any money or benefits for the Classes, they won't receive or ask to receive any attorneys' fees or reimbursement of expenses.

22. Should a TPP Class Member get its own lawyer?

A TPP Class Member doesn't need to hire its own lawyer, but, if a TPP wants its own lawyer to speak for it or appear in Court, it must file a Notice of Appearance (*see* Question 18 to find out how to submit a Notice of Appearance). If a Class Member hires a lawyer to appear for it in the lawsuits, it will have to make its own arrangement for that lawyer's compensation.

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

GETTING MORE INFORMATION

23. Are more details and information available?

This Notice is just a summary of the lawsuits. More details are in the Complaint filed by Class Counsel and the other legal documents that have been filed with the Court in this lawsuit. Anyone can look at and copy these legal documents at any time during regular office hours at the Office of the Clerk of Court, John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Boston, Massachusetts 02210. Copies of some of the important documents, like the Complaint, are also available online at www.AWPlitigation.net.

In addition, if you have any questions about the lawsuits or this Notice, you may:

- Visit the AWP Litigation Web site at www.AWPlitigation.net
- Call toll free 1-xxx-xxx-xxxx (hearing impaired call 1-yyy-yyy-yyy)
- Write to: AWP Litigation Administrator, PO Box xxxx, City, State Zip code.

24. How will I be notified about the outcome of the trials?

Information about the trials will be posted on the Web site as appropriate. You may also register on the Web site or by mail to get notification of the outcome of the litigation and other significant occurrences associated with these cases. To register by mail send a letter to the AWP Litigation Administrator at the address above. To register on the Web site, go to the site and access the "Registration" link on the Web site menu.

By Order of the United States District Court, District of Massachusetts.

Date: _____

The Honorable Judge Patti B. Saris

Questions? Call toll free 1-800-000-0000, or visit www.AWPlitigation.net.

In re Pharmaceutical Industry Average Wholesale Price Litigation
Docket No. 01-CV-1225747-PBS

EXCLUSION FORM

Only Complete this Form if You Do NOT Want to be Included in One or More of the Classes

By Completing This Form You Are Excluding Yourself From One or More of The Classes and Nothing That Happens in the Class(es) You Check Below Will Affect You. That Means You Will Not Be Able To Participate in Any Benefits Obtained By The Class(es), and it Also Means You Will Not Be Bound By The Outcome Of Any Trials

Please check the box(es) indicating whether you are a:

- ☐ *Medicare Part B beneficiary*
☐ *Legal Heir to Medicare Part B beneficiary*

Please check the box(es) indicating which of the Classes you wish to exclude yourself from:

- ☐ *All Classes: (All Drugs)*
☐ *AstraZeneca Class: Zoladex (goserelin acetate)*
☐ *Bristol-Myers Squibb Class: Blenoxane (bleomycin sulfate), Cytoxan (cyclophosphamide), Etopophos (etoposide phosphate), Paraplatin (carboplatin), Rubex (doxorubicin hcl), Taxol (paclitaxel), VePesid (etoposide)*
☐ *Johnson & Johnson Class: Remicade (infliximab), Procrit (epoetin alfa)*

I would like to be excluded from the Class(es) indicated above. I understand that by doing so I am excluding myself from one or more of the Classes and nothing that happens in the Classes will affect me. I understand that I will not be able to participate in any benefits obtained by the Classes and that I will not be bound the outcome of any trials.

Name

Street

City, State, Zip code

Signature

Date

Mail By [____], 2006 To:
AWP Litigation Administrator
P.O. Box XXX
City, State Zip Code